

Summary and Response to Comments Re: Section 2632.13

Comment No. 1:

Commentator: Samuel Sorich, National Association of Independent Insurers

Date of Comment: March 7, 2002

Type of Comment: Written

Summary of Comment:	Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
(a) The Proposed Regulation is too Complicated to be Understood by Insureds The commentator asserts that the provisions of principally at-fault defined in the California Code of Regulations Section 2632.13 may be understood by underwriters and attorneys but not by most insureds.	(a) The Proposed Regulation is too Complicated to be Understood by Insureds The comment is not directed to the subject of this rulemaking proceeding and a specific response is not required. The proposed language of California Code of Regulations Section 2632.13(i) is easily understandable.
(b) Seeking Additional Information from the Driver The commentator asserts that relying on a driver's declaration about his or her at-fault accident history could prevent an insurer from asking for further information about the driver's accident history.	(b) Seeking Additional Information from the Driver The regulation specifically provides that it shall not prevent an insurer from asking follow-up questions about the information contained in the declaration. The proposed regulation allows the insurer to use Department of Motor Vehicle (DMV) Records and Comprehensive Loss Underwriting Exchange (CLUE) reports.
(c) Revision of the Proposed Regulation to add Sources of Information The Commentator would like to amend the second paragraph and add "other sources of information" to allow an insurer to investigate the insured's declaration.	(c) Revision of the Proposed Regulation to add Sources of Information The proposed regulation does not require revision. The first paragraph states that an insured's declaration shall be sufficient proof absent of contrary information from an independent source.

Comment No. 2:

Commentator: Douglas Lutgen, CSAA Inter-Insurance Bureau

Date of Comment: March 7, 2002

Type of Comment: Written

Summary of Comment:	Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
(a) Future Notification The commentator would like be notified if there are any changes to the proposed regulation.	(a) Future Notification The comment does not address the proposed regulation. The company will be placed on the mailing list regarding any changes to the proposed regulation.

Comment No. 3:

Commentator: Jose Graves, 21st Century Insurance

Date of Comment: March 7, 2002

Type of Comment: Written

Summary of Comment:	Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
(a) Driving Information from Insurance Sources is the Most Reliable Form of Information The commentator asserts that DMV records and CLUE Reports are incomplete when the insured has not had previous insurance.	(a) Driving Information from Insurance Sources is the Most Reliable Form of Information The regulation has been proposed to clarify that insurers cannot require prior insurance information to verify a driver's accident history. California Insurance Code Section 1861.02(c) provides that "the absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Drive Discount policy, or generally for automobile rates, premiums or insurability." The proposed regulation will require an insurer to accept a driver's declaration as to his or her at-fault accident history. If the insurer wishes to supplement information it can review DMV records and CLUE reports.

<p>(b) The Proposed Regulation is Contrary to California Insurance Code Section 1861.02(c)</p> <p>The commentator asserts that the Department appears to ignore the “in and of itself” language in California Insurance Code Section 1861.02(c). Prior insurance can be used for determining eligibility for the Good Driver Discount and in determining rates so long as it is not the exclusive means of doing so.</p>	<p>(b) The Proposed Regulation is Contrary to California Insurance Code Section 1861.02(c)</p> <p>The Commissioner disagrees with this legal interpretation. The commentator is implying that prior insurance can be used as a rating factor when it is not the only rating factor. California Insurance Code Section 1861.02(a) requires that automobile insurance rates and premiums shall be determined by using three mandatory automobile rating factors; therefore, prior insurance could never be the sole rating factor. If the commentator is arguing that prior insurance coverage can be considered as long as it is not the only consideration, the Commissioner believes that the “in an of itself” language cannot reasonably be so construed.</p>
<p>(c) The Proposed Regulation Does not Meet the Standards set by Government Code Section 11349.1</p> <p>The Commentator asserts that the proposed regulation does not meet the following standards; Necessity, Authority, Consistency, and Reference required by Government Code Section 11349.1.</p>	<p>(c) The Proposed Regulation Does not Meet the Standards set by Government Code Section 11349.1</p> <p>The regulation is necessary to ensure that insurers do not, in effect, use prior insurance “in and of itself” to determine rates, premiums, or insurability. The regulation is consistent with California Insurance Code Section 1861.02(c) and meets the authority and reference standards as set forth in the Government Code.</p>

Comment No. 4:

Commentator: Drew E. Pomerance; Roxborough, Pomerance & Nye

Date of Comment: January 15, 2002

Type of Comment: Written

<p>Summary of Comment:</p>	<p>Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.</p>
<p>(a) The commentator wanted to make an appointment to inspect the Commissioner’s file.</p>	<p>(a) The comment did not address the proposed regulation.</p>

Comment No. 5:

Commentator: Lorelle Kitzmiller, Executive Director, American Agents Alliance

Date of Comment: March 6, 2002

Type of Comment: Written

Summary of Comment:	Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
(a) The Proposed Regulation Would Increase Costs The commentator asserts that if a company must take the word of the insured, costs will increase.	(a) The Proposed Regulation Would Increase Costs The commentator does not specify how costs will increase. California Code of Regulations Section 2632.13 specifies how an insurer shall determine the applicant's principally at-fault accidents. The proposed regulation simply requires an insurer to accept a driver's declaration to verify his or her accident history.

Comment No. 6:

Commentator: Peter Gorman, President and Regional Manager, Alliance of American Insurers

Date of Comment: March 4, 2002

Type of Comment: Written

Summary of Comment:	Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
(a) Persistency The commentator asserts that persistency could not be used as the sole determinate ("in and of itself") but may be used in combination with other rating factors.	(a) Persistency The comment did not address the proposed regulation. Therefore a specific response is not required.

Comment No. 7:

Commentator: Douglas L. Hallett, Mercury Insurance Group

Date of Comment: February 28, 2002

Type of Comment: Written

Summary of Comment:	Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
<p>(a) The Proposed Regulation Contradicts California Insurance Code Section 1861.02(c)</p> <p>The commentator asserts that California Insurance Code Section 1861.02(c) does not mean that insurers cannot look to prior insurance in assessing new applicants. All California Insurance Code Section 1861.02(c) precludes is the use of the absence of prior coverage “in and of itself” as a means of ratemaking. Using a lack of prior coverage, by itself, as a means to exclude applicants violates California Insurance Code Section 1861.02(c). Verifying an at-fault history through reasonable exploration of a driver’s insurance history does not.</p>	<p>(a) The Proposed Regulation Contradicts California Insurance Code Section 1861.02(c)</p> <p>See response to comment 3(b).</p>
<p>(b) The Proposed Regulation Favors Insureds who Violate the Law</p> <p>The commentator asserts that allowing self-certification or a declaration of the insured’s driving record would reward bad driving behavior.</p>	<p>(b) The Proposed Regulation Favors Insureds who Violate the Law</p> <p>The regulation does not reward bad driving behavior. The proposed regulation requires that an insurer take a declaration form from the insured regarding his or her driving safety record under penalty of perjury. The proposed regulation then defines several ways that will allow an insurer to verify the insured’s declaration. If the declaration is found to be false the insurer can cancel the insured.</p>

<p>(c) The Department has Less Draconian Means to Address the Problem it Perceives</p> <p>The commentator asserts the Department should propose a regulation specifying certain prohibited means for obtaining at-fault histories.</p>	<p>(c) The Department has Less Draconian Means to Address the Problem it Perceives</p> <p>This regulation provides specific guidance for insurers to follow. Simply setting forth examples of unreasonable means to verify accident history would not provide sufficient direction.</p>
<p>(d) Insureds Should be Required to Answer Follow-up Questions and Provide Information Available to Them</p> <p>The Commentator asserts a driver should be required to answer follow-up questions and provide information reasonably available to him or her.</p>	<p>(d) Insureds Should be Required to Answer Follow-up Questions and Provide Information Available to Them</p> <p>The proposed regulation would require that a driver provide his or her declaration, under penalty of perjury, attesting to his or her at-fault accident history. In addition, nothing in the proposed regulation prevents the insurer from asking reasonable follow-up questions, which a driver shall answer. The Commissioner believes this reasonably balances the competing interests of the insurers, consumers, and the statutory provisions.</p>

Comment No. 8

Commentator: Diane Colborn, Personal Insurance Federation of California

Date of Comment: March 7, 2002

Type of Comment: Written

<p>Summary of Comment:</p>	<p>Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.</p>
<p>(a) Would Propose Changes to the Proposed Regulation Language</p> <p>The commentator would request that language allowing insurers to use DMV records, CLUE Reports, and follow-up questions regarding the insured's declaration be revised to include "or other independent sources of information."</p>	<p>(a) Would Propose Changes to the Proposed Regulation Language</p> <p>The proposed regulation does not require revision. The first paragraph states that the insured's declaration shall be sufficient proof absent contrary information from specified independent sources.</p>

<p>(b)The Proposed Regulation is Ambiguous as to What Questions Can be Asked</p> <p>The commentator asserts that the “follow-up” questions in conjunction with the declaration are vague. The proposed regulation is unclear as to what can be asked by the insurer.</p>	<p>(b)The Proposed Regulation is Ambiguous as to What Questions Can be Asked</p> <p>The proposed regulation allows an insurer to ask “follow-up” questions. These questions would result from the insured’s declaration. In part, what can be asked depends on the circumstances of each case.</p>
<p>(c) The Proposed Regulation Violates California Insurance Code Sections 661 and 1861.03</p> <p>The commentator asserts that California Insurance Code Sections 661 and 1861.03 provide that fraud and material misrepresentation are grounds for cancellation of the policy. Contrary language is proposed in the regulation.</p>	<p>(c) The Proposed Regulation Violates California Insurance Code Sections 661 and 1861.03</p> <p>The regulation is consistent with the cited code provisions. It specifically authorizes cancellation if the declaration contains a fraudulent or material misrepresentation.</p>
<p>(d) The Proposed Regulation Allows an Insured to Make Dishonest Declarations</p> <p>The commentator asserts that a second insurer would not be able to verify the accident history of an insured after he or she has been cancelled or non-renewed due to a dishonest or mistaken declaration.</p>	<p>(d) The Proposed Regulation Allows an Insured to Make Dishonest Declarations</p> <p>Every insurer has the same means of reviewing an application. If an insurer while underwriting an applicant found the insured had given a false declaration a second insurer would have a similar opportunity to discover any misrepresentations.</p>

Comment No. 9:

Commentator: Mark Savage, Southern Christian Leadership Conference and Consumers Union of U.S., Inc.

Date of Comment: March 7, 2002

Type of Comment: Written

<p>Summary of Comment:</p>	<p>Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.</p>
<p>(a) The Proposed Regulation’s Use of the Word “Declaration” Could be Misconstrued</p> <p>The commentator asserts that an insurer could delay complying with the regulation until it receives a declaration in legal form.</p>	<p>(a) The Proposed Regulation’s Use of the Word “Declaration” Could be Misconstrued</p> <p>The language of the regulation is clear. A driver must provide a specific declaration attesting to accident history. If an insurer refuses to accept a declaration, that is a matter for possible</p>

	enforcement action depending on the facts.
<p>(b) The Regulation Should Specify a Minimal Evidentiary Standard</p> <p>The commentator asserts that the proposed regulation should set forth a minimal evidentiary standard by inserting the words substantial and credible in the first and third paragraph of the proposed regulation before the insurer could rely upon the “contrary information from an independent source.”</p>	<p>b) The Regulation Should Specify a Minimal Evidentiary Standard</p> <p>The suggested language is unnecessary. An insurer must use credible information to underwrite a policy.</p>

Comment No. 10:

Commentator: Samuel Sorich, National Association of Independent Insurers

Date of Comment: March 7, 2002

Type of Comment: Oral

Summary of Comment:	Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
<p>a) The Proposed Regulation is too Complicated to be Understood by Insureds</p> <p>The commentator asserts that the provisions of principally at-fault defined in the California Code of Regulations Section 2632.13 may be understood by underwriters and attorneys but not by most insureds.</p>	<p>(a) The Proposed Regulation is too Complicated to be Understood by Insureds</p> <p>The comment is not directed to the subject of this rulemaking proceeding and a specific response is not required. The proposed language of California Code of Regulations Section 2632.13(i) is easily understandable.</p>
<p>(b) The Proposed Regulation is at Odds With California Insurance Code Section 1861.02</p> <p>The commentator asserts that the proposed regulation is at odds with the Insurance Code requirement that auto insurance rates must be based on an insured’s driving safety record.</p>	<p>(b) The Proposed Regulation is at Odds With California Insurance Code Section 1861.02</p> <p>The proposed regulation does base rates on an insured’s driving safety record, as confirmed by the driver under penalty of perjury, unless contrary information exists from an independent source.</p>

<p>(c) Seeking Additional Information From the Driver</p> <p>The commentator asserts that relying on a driver's declaration regarding his or her at-fault accident history could prevent the insurer from asking follow-up questions regarding accident history.</p>	<p>(c) Seeking Additional Information From the Driver</p> <p>See response to comment 1(b).</p>
<p>(d) Revision of the Proposed Regulation to add Sources of Information</p> <p>The commentator is opposed to the proposed regulation's self-certification approach. The commentator would like to add language in the second paragraph to include "other sources of information."</p>	<p>(d) Revision of the Proposed Regulation to add Sources of Information</p> <p>The proposed regulation does not require revision. The first paragraph states that an insured's declaration shall be sufficient proof absent of contrary information from and independent source.</p>

Comment No. 11:

Commentator: Michael Brison

Date of Comment: March 7, 2002

Type of Comment: Oral

<p>Summary of Comment:</p>	<p>Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.</p>
<p>(a) The Declaration Under Penalty of Perjury Would be Difficult to Enforce</p> <p>The commentator asserts that although the declaration must be provided under penalty of perjury it would not be cost effective to the Insurance Department to enforce the regulation.</p>	<p>(a) The Declaration Under Penalty of Perjury Would be Difficult to Enforce</p> <p>The Department will verify and enforce compliance as it does for other regulations.</p>
<p>(b)The Addition of Claims Administrators to the List of Sources Used to Verify an Insured's Accident History</p> <p>The commentator asserts the addition of a claims administrator would be a valuable resource to an insurer. Claims administrators might handle claims for ten different insurers. If not all accidents are reported to CLUE then the Claims Administrator could provide information not readily available.</p>	<p>(b)The Addition of Claims Administrators to the List of Sources Used to Verify an Insured's Accident History</p> <p>The Commissioner disagrees that the requested additional source should be added to the proposed regulation. The proposed regulation allows an insurer to ask follow-up questions in addition to using other specified sources.</p>

Comment No. 12:

Commentator: Drew Pomerance; Roxborough, Pomerance & Nye

Date of Comment: March 7, 2002

Type of Comment: Oral

Summary of Comment:	Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
(a)The Commentator Would Allow a Third Party to Verify an Insured's Declaration The Commentator indicates he would support allowing someone else to verify the insured's declaration. This additional layer could include friends, family, neighbors, relatives, mothers, or fathers.	(a) The Commentator Would Allow a Third Party to Verify an Insured's Declaration The Commissioner disagrees that the additional layer needs to be added. It simply creates an additional burden on applicants.

Comment No. 13:

Commentator: Diane Colburn; Personal Insurance Federation of California

Date of Comment: March 7, 2002

Type of Comment: Oral

Summary of Comment:	Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
(a) Unclear as to the Types of Follow-up Questions That Would be Allowed The commentator asserts that the proposed regulation is unclear in defining what kind of follow-up questions could be asked.	(a) Unclear as to the Types of Follow-up Questions That Would be Allowed The regulation provides that an insurer may ask follow-up questions about the information contained in the declaration. It is impossible to anticipate and specify in the regulation each follow-up question that may be asked.

<p>(b) Would Propose Changes to the Proposed Regulation</p> <p>The commentator asserts that in addition to DMV records, CLUE Reports, and follow-up questions allowed to verify a driving record, the term “other sources of information” should be added to the second paragraph of the proposed regulation.</p>	<p>(b) Would Propose Changes to the Proposed Regulation</p> <p>Please see response to comment 8(a).</p>
<p>(c) Clarification of the Text of the Regulation</p> <p>The commentator asserts that it is unclear what would constitute evidence demonstrating compliance.</p>	<p>(c) Clarification of the Text of the Regulation</p> <p>The text of the regulation requires that an insurer which offers private passenger auto coverage in California file with the Department evidence that it is in compliance with the regulation or a plan demonstrating how it will comply with the new regulation. The proposed regulation is clear that either evidence that the insurer is in compliance with the proposed regulation or a plan demonstrating how it will comply with the proposed regulation shall be made within 45 days of the proposed regulation’s effective date. For example, an insurer could file a class plan demonstrating compliance.</p>
<p>(d) The Proposed Regulation Violates California Insurance Code Section 661</p> <p>The commentator asserts that requiring the insurer to notify the driver of contrary information denies the insurer the right to cancel the policy as allowed by California Insurance Code Section 661.</p>	<p>(d) The Proposed Regulation Violates California Insurance Code Section 661</p> <p>The proposed regulation does not prohibit an insurer from canceling a policy, in appropriate circumstances, after allowing an applicant the opportunity to provide a response.</p>

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Comment No. 14:

Commentator: Tracy Sandin, 21st Century Insurance

Date of Comment: March 7, 2002

Type of Comment: Oral

Summary of Comment:	Response to Comment The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
(a) An Applicant Would be More Inclined to Misstate the Facts on the Phone The commentator asserts that 21 st Century does not have agents and the company takes applications over the phone. Therefore an applicant would be inclined to be less honest in answering questions regarding his or her driving record when giving the information over the phone.	(a) An Applicant Would be More Inclined to Misstate the Facts on the Phone The Commissioner disagrees. Our legal system presumes that people comply with the law. There are many situations where information is provided to business or government agencies under penalty of perjury, when it is provided in person, by mail or over the phone. A company accepting applications by phone can still request a signed declaration.

Comment No. 15:

Commentator: Pamela Pressley, Foundation for Taxpayer and Consumer Rights

Date of Comment: March 7, 2002

Type of Comment: Oral

Summary of Comment:	Response to Comment: The Commissioner has considered the comment and has not changed the proposed regulation in response to the comment.
(a) Allow the Declaration to Take any Form The commentator asserts that the proposed regulation should allow the driver's declaration to take any form as long as it contains the statement the driver is attesting to his or her at-fault accident history under penalty of perjury.	(a) Allow the Declaration to Take any Form Other than requiring that the declaration be provided under penalty of perjury, the regulation does not specify the format of the declaration.
(b) Have a Standard for the Sufficiency of Evidence the Insurer Would be Required to Provide The commentator asserts an insurer should be required to show support for the conclusion that a driver has materially misrepresented	(b) Have a Standard for the Sufficiency of Evidence the Insurer Would be Required to Provide The Commissioner disagrees that an additional standard is required. Under California Insurance Code Section 661, if an insurer finds there was a

<p>anything in his or her declaration. The commentator suggests that this could be defined in a separate declaration.</p>	<p>material misrepresentation or fraud, the policy can be cancelled. The proposed regulation will allow an insured five days to respond to any contrary information that the insurer finds that disputes the insured's declaration.</p>
<p>(c) The Insurer Should be Required to Notify From What Independent Source the Information was Obtained</p> <p>The commentator believes that the proposed regulation should require the insurer to identify from what source the insurer has based its decision to cancel or re-rate the policy.</p>	<p>(c) The Insurer Should be Required to Notify From What Independent Source the Information was Obtained</p> <p>The Commissioner disagrees that the proposed regulation should require the insurer to notify from what independent source the information was obtained. The insurer must provide sufficient information to allow the driver to provide a response. However, the necessary detail is currently left to the discretion of the insurer, based on the facts and circumstances of the particular case.</p>